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Cc: Keener, Bill[Keener.Bill@epa.gov]; Zito, Kelly[ZITO.KELLY@EPA.GOV]
From: Reyes, Deldi
Sent: Wed 2/17/2016 11:03:04 PM
Subject: RE: PLEASE REVIEW ASAP: Compilation of Clarifications for Exide Bullets

Looks good!

From: Maier, Brent
Sent: Wednesday, February 17, 2016 2:47 PM
To: Huettelman, Tom <Huettelman.Tom@epa.gov>; Meer, Daniel <Meer.Daniel@epa.gov>; Reyes, Deldi <Reyes.Deldi@epa.gov>; Serda, Sophia <Serda.Sophia@epa.gov>; Kao, Jessica <Kao.Jessica@epa.gov>; Sugerman, Rebecca <Sugerman.Rebecca@epa.gov>
Cc: Keener, Bill <Keener.Bill@epa.gov>; Zito, Kelly <ZITO.KELLY@EPA.GOV>
Subject: PLEASE REVIEW ASAP: Compilation of Clarifications for Exide Bullets
Importance: High

All –

Included below is the compilation of clarifications I have received from Tom, Deldi, Jessica, and Rebecca to the bullets provided by Congressman Becerra's office. Please review and let me know if anyone has any additional suggested edits. If you are fine with what I plan to send, please let me know. I would like to send before I leave the office today at 4:30pm. Thanks.

Johanna –

I have heard back from my colleagues and here are a few points of clarification on the bullet points that you shared with me. Please let me know if you have any questions or need any additional information.

Bullet Points Submitted to EPA for Review and Any Needed Clarification:

- EPA has been playing an advisory role to DTSC when they request technical assistance in understanding best practices.
- However, there is a non-prosecution agreement between DOJ, U.S. EPA, DTSC, and Exide, where U.S. EPA has no regulatory role and that role has been delegated to the state of California.
- EPA's policy/standards that would trigger a clean-up in a residential yard is if the testing is above 400 ppm and in industrial areas would be if it is above 1,200 ppm.
- But, the state of California's standard to trigger a clean-up at a residential yard is at above 80 ppm.
- Right now there is no specific pace at which Region IX EPA is recommending DTSC can take.
- On steps EPA discussed to deny a RCRA permit to DTSC (state of CA?) were unclear because EPA felt the authority to do that were unclear under federal and state laws.
- Apart from the soil risk-management standard at 400 ppm, there is no standard in soil that EPA has that would trigger an emergency evacuation
- However, there have been instances where EPA has had people relocate based on a combination of many things such as the level of lead contamination in the home and if there is clear evidence that an individual has lead poisoning.

A question I have, and maybe someone who better understands the agreement might be able to answer. In a case like this, if the state fails to effectively enforce the agreement, would there be any EPA involvement? Would they have a role?

Non-Prosecution Agreement

- *However, there is a non-prosecution agreement between DOJ, U.S. EPA, DTSC, and Exide, where U.S. EPA has no regulatory role and that role has been delegated to the state of California.*

Clarification: The March 2015 Non-Prosecution Agreement (NPA) is a criminal settlement between the U.S. Attorneys' Office (USAO) and Exide Technologies for a 10-year term. The case was investigated by EPA.

The NPA does not bind other federal, state, or local agencies from acting under their own applicable authorities.

The NPA requires Exide to comply with all Closure and Post-closure corrective and cleanup requirements set forth in the California Department of Toxic Substance Control's 2002, 2013 and 2014 orders and Closure/Post-Closure Plan.

Under the NPA, if Exide breaches the NPA, including the requirements to comply with the DTSC Orders, its admission of felony criminal conduct can be used against it in subsequent criminal prosecution.

A copy of the NPA is available at the following link (including appendices):
<http://documents.latimes.com/exide-non-prosecution-agreement>

EPA Policy Standards

Bullet Point & Clarification:

- *EPA's policy/standards that would trigger a clean-up in a residential yard is if the testing is above 400 ppm and in industrial areas would be if it is above 1,200 ppm.*

Clarification: When conducting residential cleanup for lead, EPA's policy is to clean-up if samples are above 400 ppm; for industrial areas we generally clean up to 1,200 ppm.

California's Standard

- *But, the state of California's standard to trigger a clean-up at a residential yard is at above 80 ppm.*

Clarification: California's residential soil screening level for lead is 80 ppm

Pace of Cleanup

- "Right now there is no specific pace at which Region IX EPA is recommending DTSC can take" is incomplete.

Clarification: "Right now there is no specific pace that EPA Region 9 can require DTSC to take—we want them to be thorough and do a good job."

RCRA Permit

- On steps EPA discussed to deny a RCRA permit to DTSC (state of CA?) were unclear because EPA felt the authority to do that were unclear under federal and state laws.

Clarification: DTSC had discussed with EPA the process for denying a RCRA permit to Exide. One of the challenges in addressing the permit issues at Exide was that federal and state laws do not set specific criteria for denying a permit.

Regards,

Brent Maier

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